

**IN THE HIGH COURT OF MADHYA PRADESH AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

HEARD ON THE 14th OF JULY, 2022

DELIVERED ON 13th OCTOBER, 2022

CRIMINAL APPEAL No. 1150 of 2012

Between:-

- DASHRATH S/O HARIRAM, AGED ABOUT 43 YEARS, VILLAGE**
1. **KHANDODA P.S. INGORIYA TEH. BADNAGAR, DISTT. UJJAIN**
(MADHYA PRADESH)
- RAJARAM @ RADHKRISHAN S/O HARIRAM , AGED ABOUT 42**
2. **YEARS, VIL. KHANDODA,P.S. INGORIYA, TEHSIL BADNAGAR**
(MADHYA PRADESH)
- MODIRAM S/O HARIRAM, AGED ABOUT 47 YEARS, VIL.**
3. **KHANDODA,P.S. INGORIYA TEHSIL BADNAGAR (MADHYA**
PRADESH)

.....APPELLANTS

(SHRI VIVEK SINGH, LEARNED COUNSEL FOR THE APPELLANTS)

AND

THE STATE OF MADHYA PRADESH GOVT. THRU. P.S. INGORIYA
DISTT. UJJAIN (MADHYA PRADESH)

.....RESPONDENT

(SHRI BHASKAR AGRAWAL, LEARNED GOVERNMENT ADVOCATE
FOR THE RESPONDENT/STATE)

CRIMINAL APPEAL No. 1165 of 2012

Between:-

**MODIRAM S/O GANGARAM, AGED ABOUT 50 YEARS, VILLAGE-
1. KHANDODA, P.S. INGORIYA, TEH. BADNAGAN, DIST. UJJAIN
(MADHYA PRADESH)**

**KAILASH S/O GANGARAM, AGED ABOUT 40 YEARS, VIL.
2. KHANDODA, P.S. INGORIYA, TEHSIL BADNAGAR (MADHYA
PRADESH)**

**KAMAL @ SANDEEP S/O MODIRAM , AGED ABOUT 26 YEARS, VIL.
3. KHANDODA, P.S. INGORIYA, TEHSIL BADNAGAR (MADHYA
PRADESH)**

.....APPELLANT

***(SHRI MANISH KUMAR VIJAYWARGIYA, LEARNED COUNSEL FOR
THE APPELLANTS)***

AND

**THE STATE OF MADHYA PRADESH GOVT. THROUGH P.S.
INGORIYA, DIST. UJJAIN (MADHYA PRADESH)**

.....RESPONDENT/STATE

***(SHRI BHASKAR AGRAWAL, LEARNED GOVERNMENT ADVOCATE
FOR THE RESPONDENT/STATE)***

CRIMINAL APPEAL No. 985 of 2014

Between:-

**THE STATE OF MADHYA PRADESH GOVT. THRU. P.S. INGORIYA,
DISTT.UJJAIN (MADHYA PRADESH)**

.....APPELLANT

***(SHRI BHASKAR AGRAWAL, LEARNED GOVERNMENT ADVOCATE
FOR THE RESPONDENT/STATE)***

AND

HARIRAM S/O MOTILAL JAAT, AGED ABOUT 86 YEARS,

KHANDODA,P.S.INGORIYA (MADHYA PRADESH)

.....RESPONDENT

(SHRI VIVEK SINGH, LEARNED COUNSEL FOR THE RESPONDENT)

These appeals coming on for orders this day, **JUSTICE AMAR NATH (KESHARWANI)** passed the following:

JUDGMENT

(1) The above criminal appeals are being decided by this common judgment as all the appellants of CRA. No.1150/2012 and CRA No.1165/2012 have been convicted and sentenced for murder of “Nanji” and CRA. No.985/2014 has been filed against the acquittal of accused- Hariram S/o Motilal Jaat. CRA. No.1150/2012 and CRA No.1165/2012 have been preferred under Section 374 of the Code of Criminal Procedure, 1973 and CRA. No.985/2014 has been filed under Section 378 of the Code of Criminal Procedure, 1973 (in short “Cr.P.C”) against the judgment dated 29.08.2012 passed by Sessions Judge, Ujjain in Session Trial No.566/2009 whereby the appellants of CRA. No.1150/2012 and CRA No.1165/2012 have been convicted and sentenced as mentioned below:-

In CRA.No.1150/2012, the conviction of the appellant Nos. (1) Dashrath and (3) Modiram S/o Hariram Jaat is as under:-

Conviction	Sentence		
	Imprisonment	Fine deposited details	Imprisonment in lieu of Fine
Sections 147 & 148 of I.P.C.	1 year RI	---	---

Sec. 302 r/w 149 of I.P.C.	Life Imprisonment	Rs.5000/-	1 year R.I.
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So far as appellant No.2- Radhakishan @ Rajaram is concerned, the details of his conviction is as under:-

Conviction	Sentence		
	Imprisonment	Fine deposited details	Imprisonment in lieu of Fine
Sections 147 & 148 of I.P.C.	1 year RI	---	---
Sec. 302 r/w 149 of I.P.C.	Life Imprisonment	Rs.5000/-	1 year R.I.
Sections 30 of the Arms Act.	6 months imprisonment	----	---

In CRA. No.1165/2012, the conviction of the appellant Nos. (1) Modiram S/o Gangaram Jaat (2) Kailash and (3) Kamal @ Sandeep is as under:-

Conviction	Sentence		
	Imprisonment	Fine deposited details	Imprisonment in lieu of Fine
Sections 147 & 148 of I.P.C.	1 year RI	---	---
Sec. 302 r/w 149 of I.P.C.	Life Imprisonment	Rs.5000/-	1 year R.I.

(2) Prosecution story, in brief, is that on 04.08.2009, at around 06:00 P.M., the complainant- Shriram(PW-1), and his father Nanji(deceased) were riding on a motorcycle bearing registration No.M.P.-13-MA/P9813 to their agricultural land to check Soyabean crop and apply pesticide on it. The motorcycle was being driven by Nanji, the complainant Shriram(PW-1) saw that all the accused persons were

standing on the road along with deadly weapons- *Dharia, Farsi, 12 bore gun, and Lathi* in their hands, therefore, he asked his father Nanji to slow down the bike, after which, he(PW-1) jumped from the bike and ran to the other side, one of the accused persons, Rajaram fired upon the deceased Nanji and Nanji ran towards the agricultural land belonging to Modiram, where the Nanji(deceased) was surrounded by all the accused/appellants and they started assaulting Nanji, resulting in injuries all over his body using *Dharia, Farsi and Laathi*. The deceased Nanji received various grievous injuries and succumbed to his injuries and blood loss on the spot, which were caused by the accused persons. At the same time, Prithviraj(PW-2), Chainram, and Ganpat(PW-4), who were coming from the other side, and seeing them, the accused/appellants fled. Shriram(PW-1) narrated the whole incident to his uncle Prithviraj(PW-2), then Prithviraj informed the police about the said incident. After receiving the information about the incident, the same was entered in the general diary (Roznamcha Sanha) at entry No.170/04.08.2010 (Ex.D-7) by Shri Arvind Tambe, (PW-12), the then Sub-inspector, Police Station- Ingoriya and proceeded to the spot and reached there at around 08:00 P.M., and recorded Dehati Nalishi(Ex.P-1) as per the information given by Shriram(PW-1), against the appellants and accused Hariram and registered F.I.R.(Ex.P.-29) Crime No.236/2009 under Sections 302, 147, 148 and 149 of I.P.C. During the investigation, Panchnama of dead body(Ex.P-3) was prepared and body of the deceased was sent for postmortem. The autopsy was done by Dr. B.B. Purohit (PW-5) and he prepared the autopsy report (Ex.P-6),

according to the postmortem report, the cause of the death was due to "profuse hemorrhage as a result of incised stabbed injury. Head- leading sharp injury in the brain and stabbed incised injury in the neck, and in the chest, leading sharp injuries to the carotid artery and Aorta and opined that the death is homicidal in nature."

(3) During the investigation, appellants and co-accused Hariram were arrested and after the completion of the investigation, charge-sheet was filed against the appellants and co-accused Hariram under Sections 147, 148, 149, and 302 of IPC and Sections 25 and 30 of Arms Act. Thereafter, the case was committed to session court, Dewas and the trial court framed the charges against the appellants and co-accused Hariram (except Rajaram @ Radha Kishan S/o Hariram Jaat) under Sections 147, 148, and 302 r/w 149 of IPC and against appellant Rajaram @ Radha Kishan S/o Hariram Jaat charges were framed under Sections 147, 148 and 302 r/w 149 of IPC and Sections 25/30 of Arms Act and they denied the charges and pleaded for trial. After evaluating the evidence that came on record, the trial court found the appellants guilty and convicted and sentenced them as mentioned hereinabove. Being aggrieved by the said judgment of conviction and sentence, the appellants have filed these criminal appeals before this Court and against the acquittal of co-accused Hariram, the State has filed CRA No.985/2014.

(4) The grounds for the appeal are that the judgment of the learned trial court is contrary to the law and facts on record. The appellants were falsely implicated in the case and the trial court has wrongly

convicted them for the offence under Sections 147, 148, 302 r/w 149 of I.P.C and Section 30 of the Arms Act, despite the fact that there are severe omissions and contradictions in the statements of the prosecution witnesses. Learned lower court failed to consider that the alleged eye-witness Shriram(PW-1) is the son of the deceased and Prithviraj (PW-2) is the brother of the deceased "Nanji", and Ganpat(PW-4) is the servant of the deceased and they had no reason to be at the place of incident at the relevant point of time and Ramesh (PW-3) is also relative of the deceased, therefore, PW-1, PW-2, PW-3 and PW-4 are interested witnesses. As per the case of the prosecution and statement of Shriram(PW-1), he had been to the place of the occurrence with his father deceased- Nanji to check on the Soyabean crops but at the time of the incident, in the disputed agricultural land, there were no crop of Soyabean, as the site plan(Ex.D-4) prepared by Patwari- Kamaldeep(PW-6) which was prepared at the instance of Shriram(PW-1). Arvind Tambe, Sub-Inspector(PW-12), who went to the place of occurrence and prepared the site plan has admitted in para No.15 that there were no Soyabean crops in the field of deceased Nanji, therefore, the statement of Shriram (PW-1) that he was going to the agricultural land to check on the Soyabean crops along with his father deceased- Nanji is false.

(5) Furthermore, there is no compliance of Section 157 of Cr.P.C. The statements of close relatives are inconsistent with the medical evidence of Dr. B.B. Purohit(PW-5). Alleged telephonic information only shows that only the name of appellant- Modiram was mentioned

and no other names were mentioned, nor the number of assailants was mentioned. FIR(Ex.P-29) is inconsistent with the copy of Roznamcha Sanha (Ex.P-7). As per the prosecution case, the appellant was armed with Lathi but, there are no injuries caused using Lathi on the person of the deceased Nanji. The trial court has ignored the statement of Dr. B.B. Purohit (PW-5), who has stated in the postmortem report and in the deposition before the trial court that the alleged gun-shot injuries were post-mortem and not anti-mortem, therefore, the impugned judgment and conviction is not sustainable in law, and prays for setting aside the judgment of conviction and sentence and prays for acquittal.

(6) The grounds for the appeal filed on behalf of the respondent/State are that the judgment of the trial court regarding respondent– Hariram S/o Motilal Jaat is against the evidence placed on record and contrary to the law, which is not sustainable in the eyes of law. Before the trial court, Shriram(PW-1) who is an eyewitness to the incident had identified the respondent Hariram and categorically stated that the respondent- Hariram provoked other co-accused persons stating that “Aaj Saale Ko Jaan Se Maardo Bachna Nahi Chahiye”. It was also stated that the statement of Shriram(PW-1) was corroborated by Dehati Nalish(Ex.P-1) and the statement recorded under Section 161 of Cr.P.C. (Ex.D-3), therefore, the respondent- Hariram was also liable to be convicted and sentenced as other co-accused persons were convicted and sentenced, therefore, the judgment of trial court regarding respondent- Hariram is contrary to law and evidence and, therefore, prays to set aside the parts of the finding of the trial court and to convict

and sentence the respondent- Hariram.

(7) Learned counsel for the appellants in Cr.A. No.1150/2012 and Cr.A. No.1165/2012 in their arguments have drawn the attention of this Court toward the grounds mentioned in the appeal memo and prayed for acquittal of the appellants.

(8) Counsel appearing for the respondent/State in Cr.A. No.1150/2012 and Cr.A. No.1165/2012 and for the appellant in Cr.A. No.985/2014 opposed the prayer by submitting that the appellants in Cr.A. No.1150/2012 and Cr.A. No.1165/2012 have assaulted the deceased using *Dhariya, Farsi, Lathi* and Gun. The statement of eye-witness "Shriram" (PW-1) was corroborated by Prithviraj (PW-2) and Ganpat(PW-4), medical evidence by Dr. B.B. Purohit (PW-5), autopsy report (Ex.P-6) and FSL report (Ex.P-40 & Ex.P-41). Therefore, the judgment and sentence passed against the appellants in Cr.A. No.1150/2012 and Cr.A. No.1165/2012 are as per law, and therefore, no interference is called for and submitted that the learned trial court has wrongly acquitted accused-Hariram (respondent of Cr.A. No.985/2014) and submitted that Hariram is the person whose presence is proved by eye witness Shriram (PW-1) and he provoked the other co-accused persons/appellants to murder "Nanji", therefore, accused-Hariram is also liable for murder of "Nanji", hence, with the aid of Section 149 of IPC, accused-Hariram is also liable to be convicted and sentenced for murder of "Nanji". Hence, prayed to allow Criminal Appeal No.985/2014 filed on behalf of the State and prayed for dismissal of Criminal Appeal No.1150/2012 and Criminal Appeal No.1165/2012

filed on behalf of convicted and sentenced persons- (1) Dashrath S/o Hariram (2) Rajaram @ Radhakishan S/o Hariram (3) Modiram S/o Hariram (4) Modiram S/o Gangaram (5) Kailash S/o Gangaram and (6) Kamal @ Sandeep S/o Modiram.

(9) We have heard the learned counsel for the parties and perused the record and examined the statement of witnesses.

(10) As per the statement of Dr. B.B. Purohit (PW-5), who conducted the autopsy of deceased "Nanji", the cause of death was "profuse hemorrhage as a result of incised stabbed injury. Head- leading sharp injury in the brain and stabbed incised injury in the neck, and in the chest, leading sharp injuries to the carotid artery and Aorta" and opined that the death is homicidal in nature and proved the autopsy report (Ex.P-6). That part of the Statement of Dr. B.B. Purohit, (PW-5) is unchallenged and there is no challenge to the findings recorded by the trial court that the death of "Nanji" is "homicidal in nature" due to injuries found on the body of "Nanji", hence, we are not required to appreciate the same, hence, we affirm the same.

(11). Now, the only issue remains before us is that "whether the murder of "Nanji" was caused by the appellants of Cr.A. No.1150/2012 the appellants of Cr.A. No.1165/2012 and by the respondent "Hariram" of Cr.A. No.985/2014.

(12) As per the prosecution case, it is the case of eyewitnesses, and to prove his case the prosecution has examined "Hariram" (PW-1) as an eye witness, who was riding on a motorcycle driven by the deceased "Nanji" at the time of the incident and examined Prithviraj (PW-2) and

Ganpat (PW-4), who respectively reached on the spot after hearing people shouting and the gunshot.

(13) Hariram (PW-1) stated in his chief examination before the trial court that on the date of the incident at around 06:00 P.M., he and his father went on to their agricultural land on a motorcycle which his father was driving to check on crops and spray insecticides if need be. While on the way to their farm, PW-1 saw that the accused persons were standing at some distance armed with weapons, and that is when he asked his father to stop the motorcycle, and while the motorcycle was deaccelerating, he jumped off the motorcycle. PW-1 further stated that the accused-Rajaram Jaat fired the gun from the front. Then, his father left the motorcycle and ran towards the farm, at that moment accused-Modiram son of Gangaram hit his father on his face with “*Dhariya*”, thereafter, accused- Kailash, Kamal and Modiram S/o Hariram hit his father with a *Farsi* and accused-Dashrath struck his father with a stick, while Hariram was saying that “Aaj Saale Ko Jaan Se Maardo Bachna Nahi Chahiye”

(14) PW-1 further stated that when the accused persons were assaulting his father, he was shouting and asking them to stop. While he was shouting, accused persons started advancing towards him to kill him, then he too started running towards the road and saw that his Kaka Prithviraj (PW-2) and Chainram were coming down the road, and from one side, Ganpat Chamar (PW-4) reached there, after seeing this, the accused persons fled the scene and he found that his father was dead by that time and he narrated the whole incident to his Kaka- Prithviraj

(PW-2) and Chainram. PW-1 further said that his father had multiple injuries on his face, neck, and chest, his Kaka called the Police, and thereafter the police reached the spot and lodged the report of the whole incident.

(15) As per the statement of Hariram (PW-1), the information about the incident was given by Prithviraj (PW-2) to the police by phone from the place of the incident, and police came on the spot, then he (PW-1) lodged the report with police (Dehati Nalishi Ex.P-1). The statement of PW-1 was corroborated by Prithviraj (PW-2) and Arvind Tambe, Sub-inspector (PW-12).

(16) Prithviraj (PW-2) stated in his chief examination before the trial court that on the date of the incident on 04.08.2009, he was coming from Mundat along with Chainram on his motorcycle at around 06:00 P.M., and when he was near to the under-construction house of Jagdish Balai, he heard shouting, thereafter he turned around towards the agricultural land **which was purchased by deceased Nanji from Rajaram S/o Gangaram**, where he saw that Shriram was running towards him and Rajaram son of Hariram was carrying a gun, Modiram son of Gangaram carrying a *Dharia*, while Modiram son of Hariram, Kailash and Kamal alias Sandeep were carrying *Farsi*, Dashrath was carrying a *Lathi* and Hariram was unarmed, were chasing Shriram, and he also saw Ganpat Chamar standing there and after seeing them, the accused persons ran away. After that, all three went to the dead body of Nanji which was covered in blood, and found that there were injuries on the head, neck, and face of the body and Nanji was lying dead. PW-2

further stated that Shriram told him about the incident and then he informed the police station and after one and a half hours, police arrived there and scribed the report as stated by Hariram.

(17) Statement of PW-1 and PW-2 has been corroborated by Arvind Tambe Sub-inspector (PW-12) regarding the information given about the incident to the police and lodging the report. Arvind Tambe (PW-12) stated in his chief examination before the trial court that on 04.08.2009, he was posted as Sub-inspector at PS- Ingoriya and he received the information by telephone that in the village- Khandoda, "Nanji" was murdered by assault, then he recorded the same in Roznamcha (Ex.D-7) and rushed to the spot along with police party by informing senior official and after reaching the spot, he wrote "Dehati Nalishi" (Ex.P-1) as told by PW-1.

(18) Learned counsel for the appellants submits that the information given by Prithviraj (PW-2) to the police on phone has not described all the names of the appellants but, only disclosed the name of appellant- Modiram in these circumstances, prosecution story is not to be believed. In support of his arguments, he placed reliance upon the citation of **Wilayat Khan and others Vs. State of U.P., AIR 1953 SC 122.**

(19) We have considered the arguments and gone through the citations placed reliance upon by the learned counsel for the appellants.

(20) Copy of "Roznamcha Sanha" (Ex.D-7) dated 04.08.2009, time 19.00 hours is on record, and contents of Ex.D-7) are reproduced as below-

"इस समय सूचना है कि पृथ्वीराज जाट निवासी खण्डोदा द्वारा

जरिये टेलीफोन सूचना दी कि मेरे बड़े भाई नानजी खेत पर घूमने गये थे मोडीराम व उसके साथियों ने मेरे बड़े भाई नानजी निवासी खण्डोदा के मारपीट कर हत्या कर दी है। आमद सूचना दर्ज की गयी"

(21) Since, in the entry of "Roznamcha Sanha" (Ex.D-7), it has been mentioned that Modiram and his companions have assaulted and killed his elder brother "Nanji" and after that when police came to the spot, the eye-witness - Hariram (PW-1) scribed the detailed report "Dehati Nalishi" (Ex.P-1), therefore, no benefit of doubt can be granted to the appellants and the citation placed by learned counsel of the appellants does not extend the benefit to the appellants

(22) As per Dehati Nalishi (Ex.P-1), the date and time of the incident are 04.08.2009 at 06.00 P.M. and as per Ex.D-7, information about crime was entered in Roznamcha Sanha at 19.00 hours and "Dehati Nalishi" (Ex.P-1) was recorded on 04.08.2009 at about 20:10 hours. Therefore, in giving the information about the incident to the police and in lodging the detailed report, there was no undue delay. In Dehati Nalishi (Ex.P-1) names of accused persons were specifically mentioned and the overt act of all the accused persons was also specifically mentioned.

(23) Learned counsel for the appellants submits that provision of Section 157 of Cr.P.C. was not complied with in the case and in that regard, he draw the attention of Court towards cross-examination para 7 of PW-12 in which PW-12 has admitted that there is no entry in Ex.D-9 (station delivery book) regarding sending of copy of F.I.R. No.233/09

and F.I.R. No.234/09 between the date 03.08.2009 and 05.08.2009.

(24) We have considered the above arguments advanced by the learned counsel and perused the statement of PW-12. Arvind Tambe, Sub-inspector (PW-12) has stated in his chief examination para 6 that, information regarding registration of the crime was sent to the concerned magistrate on 05.08.2009, which was received by concerning authority as acknowledgment was present therein. PW-12 has denied in para 7 of his cross-examination that there is no existence of Dehati Nalishi (Ex.P-1) and F.I.R. (Ex.P-29) till 05.08.2009. Since, in continuation of Roznamcha entry Ex.D-7, the Dehati Nalishi (Ex.P-1) was written on the spot on same day within 02 hours 10 minutes of the incident and on the basis of Ex.P-1 the F.I.R. (Ex.P-29) was registered on 04.08.2009 at 22:50 hours. Therefore, it cannot be said that the F.I.R. (Ex.P-29) is antedated or antitime.

(25) Hon'ble Apex Court has held in case of **Sarwan Singh and others Vs. State of Punjab, AIR 1976 SC, 2304** that "delay in dispatch of First Information Report to Magistrate is not a circumstance which can throw out the prosecution case in its entirety".

(26) In case of **Anjan Das Gupta Vs. State of West Bengal and others (2017) 11 SCC 222**, Hon'ble Apex Court has reiterated that "Delay in forwarding F.I.R. to Magistrate is not fatal where investigation commenced promptly on its basis". Para 22 to 24 of the above citation are reproduced as below:-

"22. The FIR as well as the inquest report both mentioned the accused Anjan Dasgupta. The inquest report has not been

questioned on any account. The offence, having been committed at around 4-5 P.M., registration of the FIR at the police station between 7.30 to 8.00 P.M. does not cause any reason to draw any adverse inference, more so, when after the occurrence, the deceased was taken to the nearby nursing home where he was declared dead and body remained there till the inquest was over. The another circumstance, which have been heavily relied by trial court and reiterated before us by learned counsel for the appellant is dispatch of the FIR to the Magistrate with delay. This Court in [Pala Singh v. State of Punjab](#) 1972 (2) SCC 640 has held that delay in forwarding the FIR to court is not fatal in a case in which investigation has commenced promptly on its basis.

23. The I.O. after receipt of the information of an offence by R.T. message had arrived at the scene on 17:40 hours, which clearly proves the prompt commencement of the investigation. The FIR was dispatched on 22.06.2000 which has also been accepted by trial court. When no questions were put to IO in his cross-examination regarding the delay in dispatch, at the time of hearing, the accused cannot make capital of the said delay in forwarding the FIR. This Court in [Rabindra Mahto and Another v. State of Jharkhand](#) 2006 (10) SCC 432 has held that in every case from the mere delay in sending the FIR to the Magistrate, the Court would not conclude that the FIR has been recorded much later in time than shown. It is only

extraordinary and unexplained delay, which may raise doubts regarding the authenticity of the FIR.

24. The present is the case, where recording of the FIR on 16th June, 2000 itself has been proved, accepted by the trial court also, thus mere dispatch of the FIR on 22nd June, 2000 from the police station to the Magistrates' Court has no bearing on the basis of which any adverse presumption can be drawn. From the above discussion, we are of the clear view that the FIR was genuine FIR and trial court committed an error in drawing adverse inference against the prosecution and refusing to attach value to the FIR.

(27) Looking at the above mentioned facts and citation, the arguments advanced by the learned counsel for the appellants with regards to non-compliance of Section 157 of Cr.P.C. is not acceptable.

(28) Ganpat (P.W.4) has stated in his chief examination before the trial court that on the date of the incident at around 06:00 P.M., he was returning from his agricultural land, when he heard the gunshot, and after hearing the same, he went towards where the sound came and he saw that Rajaram was holding a gun, whereas Modiram was holding a *Dharia*, Kailash, Kamal and Modiram S/o Hariram were holding a *Farsi*, and Dashrath was carrying a Lathi, while Hariram was unarmed and Hariram was telling others to kill Nanji, Shriram was crying and pleading not to kill his father, but the accused persons continued to assault the deceased Nanji, at the same time, Chainram & Prithviraj arrived at the spot and when he went to check on Nanji, he found that

the accused persons had killed Nanji and fled the scene.

(29) Thus, the statements of Shriram (PW-1) and Prithviraj (PW-2) was corroborated by Ganpat (PW-4).

(30) Learned counsel for the appellants submitted that PW-1 and PW-2 are relatives of the deceased and PW-4 is the servant of the deceased therefore, PW-1, PW-2 and PW-4 are all interested witnesses and there are severe omissions and contradictions in the statements of the prosecution witnesses, and trial court failed to consider the above facts, therefore, conviction based on the statements of PW-1, PW-2 and PW-4 is not legal and is bad in law. In support of his arguments, learned counsel for the appellants placed reliance on **Muluwa S/o Binda and others Vs. The State of Madhya Pradesh, (1976) 1 SCC 37.**

(31) We have considered the above arguments of learned counsel for the appellants and perused the record and gone through the above citation and found that the facts of the case in hand are not similar to the case of Muluwa(supra). In the case of Muluwa (supra), the daughter of the deceased is claiming to be sole eye witnesses to the murderous assault on her father and not disclosing after the incident either details of the incident or names of the assailants to any one, not even her cousin or the police. In that situation, Hon'ble Apex Court has held that "her having witnessed the assault is improbable". But, in the case at hand eye witness-Hariram (PW-1) had described the incidence on the same day to Prithviraj (PW-2) and Hariram (PW-1) lodged the Dehati Nalishi (Ex.P-1) to the police on the spot on the date of incident. Therefore the citation of **Muluwa S/o Binda and others Vs. The State**

of Madhya Pradesh, (1976) 1 SCC, 37 is not helpful for the appellants.

(32) In case of **State of U.P Vs. Krishna Master and others**, AIR 2010 SC 3071, Hon'ble the Apex Court has held that-

“(8)..... Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of the evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the Trial Court and unless the reasons are weighty and formidable, it would not be proper for the appellate court to reject the evidence on the ground of variations or infirmities in the matter of trivial details. Minor omissions in the police statements are never considered to be fatal. The statements given by the witnesses before the Police are meant to be brief statements and could not take place of evidence in the court. Small/trivial omissions would not justify a finding by court that the witnesses concerned are liars. The prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a short-coming from which no criminal case is free. The main

thing to be seen is whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of incongruities obtaining in the evidence. In the latter, however, no such benefit may be available to it. In the deposition of witnesses, there are always normal discrepancies, howsoever, honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition, shock and horror at the time of occurrence and threat to the life. It is not unoften that improvements in earlier version are made at the trial in order to give a boost to the prosecution case albeit foolishly. Therefore, it is the duty of the Court to separate falsehood from the truth. In sifting the evidence, the Court has to attempt to separate the chaff from the grains in every case and this attempt cannot be abandoned on the ground that the case is baffling unless the evidence is really so confusing or conflicting that the process cannot reasonably be carried out.”

(33) In case of **Ganga Bhavani Vs. Rayapati Venkat Reddy and others**, 2013 Criminal Law Journal (SC) 4618, Hon’ble the Apex Court has held that:-

(10).....in case there are minor contradictions in the depositions of the witnesses the same are bound to be ignored as the same cannot be dubbed as improvements and it is likely to be so as the statement in the court is recorded after

an inordinate delay. In case the contradictions are so material that the same go to the root of the case, materially affect the trial or core of the prosecution case, the court has to form its opinion about the credibility of the witnesses and find out as to whether their depositions inspire confidence.”

(34) In case of **State of Karnataka Vs. Suvarnamma and another**, (2015) 1 SCC 323, Hon’ble the Apex Court has held that “though the investigating agency is expected to be fair and efficient, any lapse on its part cannot per se be a ground to throw out prosecution case when there is overwhelming evidence to prove the offence”.

(35) In case of **Appabhai Vs. State of Gujrat**, (1988) SCC (Criminal) 559, Hon’ble the Apex Court has held that-

“The Court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance. The Court by calling into aid its vast experience of men and matters in different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the entire prosecution story. The witnesses nowadays go on adding embellishments to their version

perhaps for the fear of their testimony being rejected by the court. The courts, however, should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy.”

(36) Therefore, minor contradictions and omissions which are present in the statement of eye witnesses PW-1, PW-2 and PW-4 are not fatal for the prosecution because that minor contradictions and omissions did not damage the root of the prosecution’s case.

(37) Now we consider the reliability of the testimony of related or interested witnesses. In case of **Hari Ram Vs. State of U.P, (2004) 8 SCC 146**, Hon’ble the Apex Court has held that-

“(22) As observed by this Court in State of Rajasthan v. Teja Ram and Ors., the over-insistence on witnesses having no relation with the victims often results in criminal justice going away. When any incident happens in a dwelling house or nearby the most natural witnesses would be the inmates of that house. It would be unpragmatic to ignore such natural witnesses and insist on outsiders who would not have even seen any thing. If the Court has discerned from the evidence or even from the investigation records that some other independent person has witnessed any event connecting the incident in question then there is justification for making adverse comments against non-examination of such person as prosecution witness. Otherwise, merely on surmises the Court should not castigate a prosecution for not examining other persons of the locality as prosecution witnesses. Prosecution can be expected to examine only those who have witnessed

the events and not those who have not seen it though the neighbourhood may be replete with other residents also.”

(38) In case of **Ganga Bhavani Vs. Rayapati Venkat Reddy and others**, 2013 Criminal Law Journal (SC) 4618, Hon’ble the Apex Court has held that:-

11. It is a settled legal proposition that the evidence of closely related witnesses is required to be carefully scrutinised and appreciated before any conclusion is made to rest upon it, regarding the convict/accused in a given case. Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon.

14. In view of the above, it can safely be held that natural witnesses may not be labelled as interested witnesses. Interested witnesses are those who want to derive some benefit out of the litigation/case. In case the circumstances reveal that a witness was present on the scene of the occurrence and had witnessed the crime, his deposition cannot be discarded merely on the ground of being closely related to the victim/deceased.

(39) In case of **Birender Poddar Vs. State of Bihar**, (2011) 6 SCC 350, Hon’ble the Apex Court has held that:-

“(13)we find that the law is well-settled that merely because the witnesses are related is not a ground to discard their evidence. On the other hand, the court has

held that in many cases, the relations are only available for giving evidence, having regard to the trend in our present society, where other than relations, witnesses are not available. It is of course true that the evidence of the interested witnesses have to be carefully scrutinized.”

(40) In the light of the above well settled principle of law, the statements of PW-1, PW-2 and PW-4, are not liable to be discarded on the sole basis that PW-1 is the son, PW-2 is the brother and PW-4 is the servant of the deceased.

(41) Learned counsel for the appellants submits that as per the prosecution case and as per the statement of Shriram(PW-1), he had been to the place of the occurrence along with his father deceased-Nanji to check on the Soyabean crops but at the time of the incident, in the disputed agricultural land, there were no crop of Soyabean, as the site plan(Ex.D-4) prepared by Patwari– Kamaldeep(PW-6) which was prepared at the instance of Shriram(PW-1). In this respect learned counsel for the appellants placed reliance on the citation of **Vijay Singh Vs. State of Madhya Pradesh, 2005 (Criminal Law Journal) 299 (M.P. High Court)**.

(42) We have perused the site plan(Ex.D-4) prepared by Patwari–Kamaldeep(PW-6) which was prepared at the instance of Shriram(PW-1) and perused the site plan (Ex.P-4) prepared by Arvind Tambe, Sub-inspector (PW-12) at the instance of Shriram (PW-1). In site plan (Ex.P-4) at serial No.4, it is mentioned that “disputed land relates to deceased Nanji which was purchased from Rajaram Jaat and there is Soyabean

crop”. Therefore, it cannot be said that there was no Soyabean crop on the agricultural land for which PW-1 has said that on the date of incident he had been to the place of the occurrence along with his father deceased- Nanji to check on the Soyabean crops.

(43) Learned counsel for the appellants submits that the trial court has overlooked the statement of Dr. B.B. Purohit (PW-5), who has stated in the postmortem report and in his deposition before the trial court that the alleged gun-shot injuries were post-mortem and not anti-mortem and submits that to create false evidence and to implicate appellant Rajaram falsely in the case, complainant party fired a gun-shot on the dead body of deceased. Therefore the prosecution case is doubtful against the appellants. In support of his argument learned counsel for the appellants placed reliance on the citation of **Samarjeet Singh and another Vs. State of Madhya Pradesh, [2012 Criminal Law Reporter (M.P.) 753]**.

(44) We have perused the statement of Dr. B.B. Purohit (PW-5) and impugned judgment. Learned trial court has dealt with that contention in para 48 to para 51 of the impugned judgment and trial court has held that under the facts and circumstance of the case it is not believable that the near relative of the deceased has fired a gun to create the evidence and we found the above conclusion of trial court is not perverse.

(45) Learned counsel for the appellants submits that as per the prosecution case, the appellant- Dasrath was armed with *Lathi* but, there are no injuries caused using *Lathi* on the body of the deceased Nanji, therefore, appellant-Dasrath has been falsely implicated in the case.

(46) We have perused the record and impugned judgment of trial court. As per the disclosure statement of appellant –Dasrath (Ex.P-15) on the instance of Dasrath and wooden stick (Art.-L) was seized from appellant-Dasrath as per seizure memo Ex.P-20 and seized articles including Art.-L were sent for chemical examination to FSL, Sagar as per draft Ex.P-39 and to FSL, Sagar and report (Ex.P-40) has been received and blood was found on wooden stick (Art.-L). Learned trial court has dealt with that contention in para 64 of the impugned judgment and trial court has held that various incised injuries were on the body of the deceased and in that situation it may be possible to oversight the injuries caused by blunt object and under the circumstances of the case, statement of eye witnesses could not be disbelieved. The above conclusion of the trial court is not found perverse.

(47) Learned counsel for the appellants submits that no human blood was found on *Dharia*(Art.-H) seized from the accused/appellant – Modiram s/o Gangaram, *Farsi* (Art.-J) seized from appellant-Kailash, *Laathi* (Art.-L) seized from appellant - Dasrath and *Farsi* (Art.-M) seized from the appellant Modiram s/o Hariram and nor any human blood was found on the clothes of appellant – Modiram s/o Gangaram and clothes of appellant- Kailash, which were seized from appellants- Modiram s/o Gangaram and Kailash and submits that appellants were falsely implicated in the case. In this respect, learned counsel for the appellants has placed reliance on the citation of **Raghuveer Singh and others Vs. State of M.P. 2018 (3) MPLJ (Cri.) 82.**

(48) We have perused the FSL report (ExP-41) and gone through the citation placed by the learned counsel of the appellants and found that in the case of **Raghuveer Singh(supra)** no blood-stains was found on the seized weapons Art.-E, Art.-F and Art.-G and Stick Art.-D on which blood stains were found and seized from the spot, but that that articles were not sent for the chemical examination and no explanation has been offered in that regard, therefore it was held that the prosecution case becomes doubtful. However, in the present case in the hand blood stained weapons and blood stained clothes were sent for chemical examination as per draft(ExP-39) to FSL Sagar and report ExP-41 has been received and the blood was present on *Dharia, Farsi and Laathi* Art.- H, J, L and M, therefore the aforementioned citation extends no benefit to the appellants.

(49) Learned counsel for the appellants submits that Prithviraj (PW-2) was the chance witness who was interested in creating false evidence as he gave an application (Ex.P-5) to police officer that in place of Badnagar, the dead-body of Nanji is to be sent to Ujjain for postmortem, therefore, Prithviraj (PW-2) has created false evidence about injuries.

(50) We have considered the arguments advanced by the learned counsel for the appellants and perused the documents (Ex.P-5). The contents of Ex.P-5 is reproduced as below:-

"सेवा में निवेदन है कि आज दिनांक 04/08/2009
की शाम गाँव खण्डोदा के पास में मेरे भाई श्री नानजी s/o
श्री रणछोड़ जी की हत्या कर दी गई है जिसमें काफी गहरी

चौटे आई है, जो धारदार हथियार तथा बन्दूक से पहुँचाई गई है इस कारण जिला चिकित्सालय उज्जैन में फोरेन्सीक एक्सपर्ट डॉ. कि टीम से पोस्टमार्टम करवाया जाए।

यदि बड़नगर चिकित्सालय में पोस्टमार्टम करवाया जाता है तो मुझे तथा मेरे परिवार को आशंका है, कि राजनैतिक दबाव के कारण तथा साधारण डॉ. उचित ओपिनियन देने में असमर्थ रहेंगे तथा जिसके कारण मेरे परिवार को उचित न्याय नहीं मिल पायेगा।"

(51) The contents of Ex.P-5 reveals that the Prithviraj (PW-2) had apprehensions that due to political pressure, a single doctor will not be able to give a proper opinion regarding the injuries and cause of death and for such reason, he prayed for postmortem to be conducted by the team of forensic experts of District Hospital, Ujjain, therefore, from the above facts and circumstances, it cannot be said that the request for conducting postmortem of the deceased at Distt. Hospital Ujjain was only to create the false evidence.

(52) It was suggested in the cross-examination para-14 and para-28 of Hariram(PW-1) that on the date and time of the incident the appellant Modiram s/o Hariram, Rajaram, Dasrath and Kamal were not present but they were at another place which was denied by the PW-1. Similarly in cross-examination of Prithviraj(PW-2) para-21, 33 and 34 it was suggested that that on the date and time of the incident the appellant Modiram s/o Hariram, Rajaram, Dasrath, Kailash and Kamal were not present but they were at another place which was denied by the PW-2. No evidence has been produced by the appellants to prove the plea of

alibi. Therefore, it is not proved that at the time of incident appellants were not on the spot.

(53) Motive to commit murder of “Nanji” by the appellants is also proved in the case. In that regard Hariram (PW-1) has stated in para-2 and 3 of his chief-examination before the trial court that his father has purchased 06 Bigha land from “Rajaram Jaat” and sale deed was executed in the name of his mother and on the said purchased land the crop of soybean was sown and after that when he and his father (now deceased) went to the said agricultural land, Modiram s/o Gangaram and Kailash s/o Gangaram threatened to kill him saying that “the farm belonged to them and if they (Hariram and his father) return, they (Modiram and Kailash both S/o Gangaram) will kill.” Above facts were also mentioned in the Dehati Nalsi(ExP-1). It was suggested in cross-examination of PW-1 in para-17 that Modiram and Kailash are in possession of the land of Gangaram which was denied by PW-1. It is pertinent to mention here that all the appellants to the case belong to same family, therefore, motive to cause murder of deceased Nanji was present in the case.

Conclusion

(54) In view of the foregoing discussion, the prosecution has successfully proved its case by cogent and reliable oral and documentary evidence to establish the culpability of appellants of **Cr.A. No.1150/2012** – (1) Dashrath S/o Hariram (2) Rajaram @ Radhakishan S/o Hariram and (3) Modiram S/o Hariram and appellants of **Cr.A. No.1165/2012** – (1) Modiram S/o Gangaram (2) Kailash S/o Gangaram

and (3) Kamal @ Sandeep S/o Modiram. Hence, we hereby confirm the conviction and sentence of appellants – (1) Dashrath S/o Hariram (2) Rajaram @ Radhakishan S/o Hariram and (3) Modiram S/o Hariram in **Cr.A. No.1150/2012** and appellants – (1) Modiram S/o Gangaram (2) Kailash S/o Gangaram and (3) Kamal @ Sandeep S/o Modiram in **Cr.A. No.1165/2012** in murder of deceased “Nanji”.

(55) As far as the acquittal of Hariram (respondent of Cr.A. No.985/2014) is concerned, as per material placed on record, there is no evidence on record that Hariram has performed any overt act to cause the death of deceased “Nanji”. Merely the fact that he was present on the spot and saying to other accused persons that “*Isko Maar Daalo Bach Naa Paaye*”. The learned trial court has dealt with that contention in para 65 of the impugned judgment and extend the benefit of doubt to accused Hariram and acquitted him.

(56) In the case of **State of Rajasthan Vs. Sohanlal and others, (2004) 5 Supreme Court Cases 573**, the Hon'ble Apex Court has held in para 3 as under:-

"We have carefully considered the submissions of the learned counsel appearing on either side. This Court in JT (2004) 2 SC 172: the State of Orissa v. Dhaniram Luhar, has while reiterating the view expressed in the earlier cases for the past two decades emphasized the necessity, duty and obligation of the High Court to record reasons in disposing of such cases. The hall mark of a judgment/order and exceted of judicial power by a judicial forum is to disclose the reasons for its

decision and giving of reasons has been always insisted upon as one of the fundamentals of sound administration justice delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice. The fact that the entertaining of an appeal at the instance of the State against an order of acquittal for an effective consideration of the same on merits is made subject to the preliminary exercise of obtaining of leave to appeal from the High Court, is no reason to consider it as an appeal of any inferior quality or grade, when it has been specifically and statutorily provided for or sufficient to obviate and dispense with the obvious necessity to record reasons. Any judicial power has to be judiciously exercised and the mere fact that discretion is vested with the court/forum to exercise the same either way does not constitute any licence to exercise it at whims or fancies and arbitrarily as used to be conveyed by the well known saying - 'varying according to the chancellors foot. Arbitrariness has been always held to be the anathema of judicial exercise of any power, all the more so when such orders are amenable to challenge further before higher forums. The State does not in pursuing or conducting a criminal case or an appeal espouses any right of its own but really vindicate the cause of society at large, to prevent recurrence as well as punish offences and offenders respectively, in order to preserve orderliness in society and

avert anarchy, by upholding rule of law. The provision for seeking leave to appeal is in order to ensure that no frivolous appeals are filed against orders of acquittal, as a matter of course, but that does not enable the High Court to mechanically refuse to grant leave by mere cryptic or readymade observations, as in this case, (the court does not find any error), with no further on the face of it, indication of any application of mind whatsoever. All the more so when the orders of the High Court are amenable for further challenge before this Court. Such ritualistic observations and summary disposal which has the effect of, at times, and as in this case, foreclosing statutory right of appeal, though a regulated one cannot be said to be a proper and judicial manner disposing of judiciously the claim before courts. The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind. All the more so, when refusal of leave to appeal has the effect of foreclosing once and for all a scope for scrutiny of the judgment of the trial court even at the instance and hands of the First Appellate Court. The need for recording reasons for the conclusion arrived at by the High Court, to refuse to grant leave to appeal, in our view, has nothing to do with the fact that the appeal envisaged under Section 378 Cr.P.C. is conditioned

upon the seeking for and obtaining of the leave from the court. **This court has repeatedly laid down that as the First Appellate Court the High Court even while dealing with an appeal against acquittal was also entitled and obliged as well to scan through and if need be reappraise the entire evidence, though while choosing to interfere only the court should find an absolute assurance of the guilt on the basis of evidence on record and not merely because the High Court could take one more possible or a different view only. Except the above, in the matter of the extent and depth of consideration of the appeal is concerned, no distinctions or differences in approach are envisaged in dealing with an appeal as such merely because one was against conviction or the other against an acquittal."**

(57) In the case of Gangabhavani Vs. Rayapati Ventak Reddy, 2013 (Criminal Law Journal) 4618 Supreme Court, the Hon'ble Apex Court has held as under:-

"6. This Court has persistently emphasised that there are limitations while interfering with an order against acquittal. In exceptional cases where there are compelling circumstances and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the

acquittal by the lower Court bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference.”

(58) After going through the impugned judgment and record of the trial court, we are of the opinion that the trial court has considered the oral and documentary evidence placed before them and considered the legal provisions of law and principles laid down by the Hon'ble Apex Court. With aforesaid discussion and principles laid down by the Hon'ble Apex Court as mentioned above, we are of the opinion that no interference is required regarding acquittal of Hariram by trial court.

(59) Accordingly, we dismiss **Cr.A. No.985/2014** filed by the State of Madhya Pradesh and also dismissed **Cr.A. No.1150/2012** filed on behalf of appellants – (1) Dashrath S/o Hariram (2) Rajaram @ Radhakishan S/o Hariram and (3) Modiram S/o Hariram and **Cr.A. No.1165/2012** filed on behalf of appellants – (1) Modiram S/o Gangaram (2) Kailash S/o Gangaram and (3) Kamal @ Sandeep S/o Modiram.

(60) Let a copy of this judgment with record of the court below be sent to the concerned trial court for information and compliance.

**(VIVEK RUSIA)
JUDGE**

**(AMAR NATH (KESHARWANI))
JUDGE**

N.R.